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APR - 1 1996

April 1, 1996

FEDERAL BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE

Mr. William Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

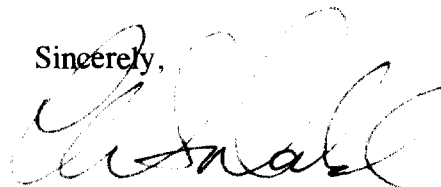
Re: CS Docket No. 96-46: Implementation of Section 302
of the Telecommunications Act of 1996
-- Open Video Systems

Dear Mr. Caton:

Enclosed for filing with the Commission please find an original and eleven copies of the Comments of the Motion Picture Association of America, Inc. in the above-referenced proceeding. In accordance with the Public Notice dated March 22, 1996, two copies have been annotated as "Extra Public Copy."

If there are any questions regarding this matter, please communicate directly with the undersigned.

Sincerely,



Charles S. Walsh

cc: ITS
Larry Walke

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BEFORE THE

Federal Communications Commission

APR - 1 1996

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Implementation of Section 302 of
the Telecommunications Act of 1996

)

CS Docket No. 96-46

)

)

Open Video Systems

)

To: The Commission

**COMMENTS OF THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC.**

**MOTION PICTURE ASSOCIATION
OF AMERICA, INC.**

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Dated: April 1, 1996

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SUMMARY

MPAA submits that the Commission's principal objectives in implementing the "open video system" provisions of the Telecommunications Act of 1996 should be to maximize the number of MVPDs able to utilize OVS facilities to compete in the video marketplace, to ensure that all competing MVPDs compete on a level playing field, and to establish safeguards so that MVPDs utilizing OVS capacity cannot discriminate against unaffiliated program vendors.

In particular, MPAA submits that the Commission should ensure that OVS operators have sufficient regulatory flexibility and economic incentives to build OVS facilities. However, such regulations also must ensure that the facilities constructed by the OVS operator are truly open and offer sufficient capacity to maximize the opportunities for both telco and non-telco MVPDs to compete.

MPAA also urges the Commission to adopt express regulatory safeguards to prevent OVS operators from discriminating against non-telco MVPDs and unaffiliated program vendors with respect to the allocation of OVS channel capacity, channel sharing, channel position, rates, and marketing. For example, channel sharing should be mandated, consistent with contractual agreements between program vendors and the MVPDs utilizing OVS capacity, and subject to real technical limitations. The Commission also should establish a rate formula that produces the lowest possible non-discriminatory rate consistent with the OVS operator's cost and should adopt specific cost allocation requirements to prevent cross-subsidization. And the Commission should confirm and clarify the applicability in the OVS context of section 616 and other statutory provisions relating to program access and the protection of program vendors against unreasonable conditions of carriage.

Lastly, MPAA's members have a vital interest in the development of multiple competitive outlets for the distribution of video programming. Therefore, MPAA urges the Commission to adopt rules that balance the regulatory environment in which OVS and other multichannel video programming distributors, including cable television, compete. In particular, the Commission should not preclude cable operators from choosing to become OVS operators or from utilizing their own OVS facilities through an affiliated MVPD (consistent with outstanding contractual arrangements). The Commission also should make clear that the must-carry obligations set out in the 1992 Cable Act run to the OVS operator and that the OVS operator is responsible, on a community-by-community basis, for complying with the network non-duplication, syndex, and sports blackout rules. Furthermore, the Commission's rules should dictate that it is the MVPD, not the OVS operator, that has the subscriber relationship with the end-user of the facility. The Commission also should acknowledge that its rules governing the implementation of OVS are not intended to affect the ultimate resolution of issues relating to the application of the cable compulsory license provisions of the 1976 Copyright Act in the OVS context.

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Implementation of Section 302 of)	CS Docket No. 96-46
the Telecommunications Act of 1996)	
)	
Open Video Systems)	

To: The Commission

**COMMENTS OF THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC.**

The Motion Picture Association of America, Inc. ("MPAA"), by its attorneys, respectfully submits these Comments in response to the Report and Order and Notice of Proposed Rulemaking ("Notice") released March 11, 1996, in the above-referenced proceeding initiated by the Commission to implement the provisions of the Telecommunications Act of 1996 regarding the establishment of "open video systems" ("OVS").¹ MPAA represents eight leading United States producers and distributors of

¹MPAA has participated in earlier video dialtone proceedings from their inception because of its interest that multiple video distribution outlets be established which ensure the flow of programming from programmers to consumers on a non-discriminatory basis.

motion pictures and television programming.² The video programming produced by MPAA's members is exhibited through multiple video outlets, including cable television systems and other multichannel video programming distributors ("MVPDs"). Specifically, MPAA member companies license unaffiliated cable program networks to exhibit the video programming they produce and/or distribute. In addition, some MPAA members have ownership interests or affiliations in programming networks, including, for example, Cable News Network, USA Network, The Disney Channel, Home Box Office and Showtime. MPAA's comments in this proceeding focus on achieving the following goals in the Commission's implementation of the OVS statutory provisions:

- (1) Maximizing the number of viable MVPDs, both telco-affiliated and non-telco affiliated, that are able to compete in the video marketplace by utilizing an OVS facility's capacity.
- (2) Ensuring that all competing video programming distributors, including telco-affiliated and non-telco MVPDs distributing programming via OVS, as well as franchised cable operators, compete on a level playing field, except where specific statutorily-mandated distinctions preclude such.
- (3) Establishing safeguards so that any MVPD, including one affiliated with a telephone company, cannot discriminate against an unaffiliated program vendor or coerce such programming vendor to provide exclusivity.

²MPAA member companies participating in these comments are Buena Vista Pictures Distribution, Inc.; Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment, Inc.; Turner Broadcasting System, Inc.; Twentieth Century Fox Film Corporation; Universal City Studios, Inc.; and Warner Bros., a Division of Time Warner Entertainment Company, L.P. Additional views of individual MPAA member companies may be expressed in separate submissions in this proceeding.

In establishing specific OVS regulations pursuant to the statute, MPAA respectfully urges that the Commission carefully specify the intended entity to which its rules will apply. For purposes of its comments, MPAA refers to the builder of the OVS capacity as the OVS operator, the telco-affiliated user of OVS facilities as the telco MVPD, unaffiliated users of OVS capacity as non-telco MVPDs, and entities that offer programming for sale on a wholesale basis to MVPDs as program vendors.³

I. The Commission Should Implement OVS Rules To Maximize Open And Competitive Outlets For Video Distribution.

MPAA submits that the OVS operator should be given ample regulatory flexibility and fair economic incentives to build open OVS facilities for the transmission of video programming. Without such flexibility and incentives, the OVS facility may not be built and competition will not be fostered. In an effort to jump-start the development of new facilities-based outlets for independent program vendors and packagers who seek to compete with both the cable operator and the telephone companies' affiliated packager, Congress itself provided substantial relief to OVS operators and MVPDs from the Title VI requirements imposed on cable operators. However, in exchange for this regulatory flexibility, OVS facilities must be both truly open and offer sufficient capacity to maximize the opportunities for both telco and non-telco MVPDs to compete in the video marketplace.

In this regard, MPAA notes that, unlike cable operators governed by the Title VI franchise process, OVS operators cannot be required to build a particular level of capacity as

³In addition to making programming available on a wholesale basis, program vendors also may choose to offer programming on a retail basis directly to consumers by utilizing OVS capacity.

a condition of obtaining a local franchise (or renewal thereof); nor are OVS operators subject to common carrier obligations that may compel the offering of capacity. MPAA is concerned that the Notice does not contain any incentives for an OVS operator to meet initial or new demand. Absent such incentives, OVS facilities will not be truly "open" so as to stimulate the creation of the maximum number of outlets for program suppliers and packagers. These incentives are particularly important since the OVS operator's own affiliated MVPD, under the Commission's interpretation of the statute, is entitled to program a minimum of one-third of the capacity of the OVS facility after deducting channels used for shared channels and public access. As a result, the capacity available to be programmed by non-telco MVPDs will diminish as the number of such non-telco MVPDs seeking to utilize the OVS facility increases, while the capacity available to be programmed by the telco-MVPD will remain undiminished. Where a telephone company both is affiliated with a packager of programming and is the operator of the facility used by that packager and by competing non-telco MVPDs or programming vendors, the Commission must provide the telephone company with sufficient incentives to expand capacity so that non-telco MVPDs are able to offer programming on the OVS facility on a competitive basis with the telco MVPD.

II. The Commission Must Establish Adequate Safeguards To Prevent Discrimination Against Programming Vendors And Non-Telco MVPDs By The OVS Operator.

The Notice requests comment as to whether there is a need for express regulation that prohibits an OVS operator from discriminating against non-telco MVPDs in its allocation of capacity. Notice at ¶ 15. MPAA submits that such express regulation of the OVS operator's allocation of capacity is appropriate.

The Commission cites the legislative history of the statute suggesting that an OVS operator should be permitted to administer the allocation of its channel capacity to "tailor services to meet the unique competitive and consumer needs of individual markets." Id. The Notice seeks comment on reconciling this general statement in the legislative history relating to the establishment of OVS facilities with the explicit statutory provision in section 653(b)(1) prohibiting discrimination by an OVS operator among MVPDs and programming vendors. Id. MPAA submits that the express statutory provision rejecting discrimination should carry far more weight than a general statement in the legislative history relating to the establishment of OVS facilities. While MPAA agrees that sufficient flexibility should be afforded the OVS operator to maximize the utilization of capacity in an economically viable fashion, such flexibility cannot be a shield behind which an OVS operator effectively closes the required "open" nature of the facility in order to favor the telco MVPD or a telco-owned programming vendor. Thus, while flexibility is warranted, it must be consistent with the obligation of the OVS operator to act in a fair, reasonable and non-discriminatory manner. In this regard, MPAA submits that the OVS operator must be prohibited from discriminating on the basis of affiliation as to: (1) channel sharing; (2) channel position; (3) channel

allocation;⁴ (4) rates for capacity among various MVPDs or other program vendors; and (5) marketing and information regarding programming offered to subscribers.

A. Shared Channels.

MPAA views the issue of shared channels as one of the most important in this proceeding. As pointed out above, the sharing of channels promotes efficiency of channel usage, reduces the cost of capacity among non-telco MVPDs, and, most importantly, maximizes both the potential number of outlets for video programming and channel space at least for the foreseeable term while capacity limits exist in a non-switched digital environment.

Section 653(b)(1)(C) of the statute permits, but does not require, an OVS operator to carry on only one channel (shared channel) any video programming offered by more than one MVPD, including the telco MVPD, and allows the Commission to implement rules to achieve such channel sharing. The Notice seeks comment on who should decide which channels are to be shared by multiple MVPDs. Notice at ¶ 37. MPAA submits that mandatory sharing will maximize the "open" nature of the OVS facility for programmers and will reduce the cost to the programmer or MVPD since the cost of the channel can be shared as well. Consequently, the OVS operator, who may be affiliated with the telco-MVPD

⁴The Notice seeks comments on its tentative conclusion that the OVS operator should be permitted to administer the allocation of channels among competing MVPDs and programming vendors. MPAA believes that absent an arrangement where such a decision is made by an entity without an affiliation with the programming vendor, the Commission must affirm (1) the prohibition on discrimination against non-telco MVPDs and programming vendors and (2) that any allocation of channels by the OVS operator be done in a fashion that avoids any technical limitations or other impediments to the goal of maximum channel sharing which MPAA, as described below, believes is crucial to the long-term viability of multiple MVPDs using an open video system.

making choices of program services, should not be permitted to determine unilaterally which channels are shared.⁵ Rather, any channels licensed by a programming vendor to more than one MVPD must be placed on a shared channel, consistent with the contractual agreement between the MVPD(s) and the program vendor and subject to technical limitations.⁶

The issue of contractual terms is significant because, as the Commission acknowledges at paragraph 41 of the Notice, program vendors must remain free to license or not license their programming (consistent with all applicable program access rules) for use by different MVPDs. MPAA urges the Commission to confirm that any MVPD desiring to provide a program service using a shared channel obviously must obtain permission regarding the manner in which the service is offered from the program owner/licensor. For example, the use of a shared channel may be conditioned, not merely on whether a particular MVPD has the contractual right to offer the channel, but also on enforcement of contractual terms related to channel identification,⁷ channel positioning,⁸ tier, etc.

⁵To allow the OVS operator to select its own channels for sharing would further increase the disparity of channel availability between telco and non-telco MVPDs. Under the FCC's proposal, shared channels do not count against the minimum one-third capacity granted the telco MVPD. The incentive for the OVS operator would be to give priority to shared channels common to its own affiliated MVPD.

⁶If technical limitations in the OVS facility restrict the number of channels that can be shared, MPAA recommends that shared status be given first to channels offered by more than one non-telco MVPD so that their channels can be freed up for other programming. Such a priority will provide incentives for the OVS operator to eliminate technical limitations on channel-sharing.

⁷ MPAA submits that the Commission must establish regulations that require OVS operators to ensure that video program providers or copyright holders are able to "suitably and uniquely identify their programming service to subscribers" and that prevent an OVS operator from altering such identification. If the program vendor provides identification within its individual programming or its service, such identification must not be removed by the OVS operator or any MVPD utilizing the OVS facility.

B. Just And Reasonable Rates.

MPAA seeks a rate structure for OVS capacity that encourages both telco and non-telco MVPDs to use the OVS facility. Moreover, ensuring just and reasonable rates for OVS channel capacity is necessary so that programmers are able, should they choose to do so, to bypass the packagers and lease individual channels directly (e.g., for one or more pay-per-channel or pay-per-view services).

While MPAA's comments in the Commission's video dialtone proceeding supported the imposition of common carrier regulation, the Telecommunications Act of 1996 expressly precludes pure common carrier regulation of an OVS operator. The Notice proposes the adoption of a presumption that rates for OVS capacity are reasonable (1) if some number of non-telco MVPDs or programmers gain access under the rates being offered by the OVS operator, or (2) if rates charged to non-telco MVPDs or programmers are no greater than those charged to a telco-affiliated MVPD, under a formula to be established by the Commission. Notice at ¶ 31. Neither of these approaches will necessarily ensure that a telco MVPD obtaining OVS channel capacity is not benefitting from subsidies from the OVS operator's regulated services. MPAA recommends that the Commission establish a rate formula that produces the lowest possible non-discriminatory rate consistent with the OVS operator's cost. Further, MPAA urges the Commission to mandate, as part of the OVS certification process, specific cost allocation requirements to prevent anticompetitive cross-subsidization of the OVS facility.

⁸(...continued)

⁸MPAA notes that, in today's non-switched digital environment, channel positioning is viewed as a valuable component in achieving audience exposure.

Lastly, the Notice asks whether the OVS operator should be permitted to charge different rates to different users based on type of service offered by programmer and differences in way compensation is received from the end user. Notice at ¶ 32. MPAA supports the adoption of rules that would prohibit any kind of discrimination based on content or that otherwise is not economically justified. Allowing the establishment of unjustifiably discriminatory rates creates too great a potential for abuse and could render other protections against discriminatory treatment largely unenforceable.⁹

C. Provisions Prohibiting Unreasonable Conditions Of Carriage.

MPAA requests that the Commission clarify those provisions of the 1996 Act which impose on OVS operators and on MVPDs utilizing the OVS facility (telco or non-telco) certain Title VI non-discrimination obligations and prohibitions on unreasonable conditions of carriage. Because telco and non-telco MVPDs using an OVS facility may have to compete with one another utilizing shared channels which do not count against the telco MVPD's guaranteed right to program one-third of the facility's capacity, there will be incentives for MVPDs to coerce exclusivity or seek other advantages from program vendors to differentiate their service. There is a crucial need, therefore, to be vigilant that OVS operators and, to the extent indicated below, MVPDs using OVS facilities are held to the following statutory provisions designed to promote carriage of independent programmers and robust video competition:

⁹MPAA notes that different considerations come into play in the establishment of rules governing the rates charged by OVS operators for channel capacity and the rates charged by cable operators for commercial leased access. Consequently, price differentials that might be warranted in the latter context should not necessarily be allowed in the former.

1. Section 616, which prohibits all MVPDs, including both telco and non-telco MVPDs using OVS capacity, from coercing a program vendor into granting an ownership interest as a condition of carriage or imposing unreasonable conditions of carriage on an unaffiliated program vendor (whether or not such unreasonable conditions are discriminatory, favoring one programmer over another).
2. Section 653(b)(1)(A), which authorizes the Commission to adopt regulations that prohibit an OVS operator from discriminating among video programming providers whether or not such discriminatory action violates section 616.
3. Section 653(c)(1)(A), which subjects the OVS operator to the program access provisions of section 628 applicable to a cable operator.
4. Section 628(j), which subjects a telco MVPD, whether using an affiliated OVS facility or another medium, to the section 628 program access rules applicable to a cable operator.
5. Section 628(j), which subjects satellite cable programmers that are affiliated with a telco to the program access rules applicable to satellite programmers affiliated with a cable operator.

III. The Commission Should Strive To Promote Fair And Effective Competition Among All Existing And Emerging Video Delivery Systems.

MPAA recognizes that, in an effort to stimulate the development of new outlets, Congress established different regulatory treatment, particularly at the local franchising level, between cable operators on the one hand and the OVS operators and users on the other. Accordingly, in implementing the development of OVS, MPAA urges the Commission to strive for a balanced, long-term policy containing sufficient regulatory safeguards to ensure both that telcos have a viable means to compete effectively and, at the same time, that incumbent cable operators are not placed at an unintended or unfair competitive disadvantage vis-a-vis OVS. Similarly, the Commission must adopt rules designed to ensure that non-telco MVPDs and unaffiliated program producers have a genuine opportunity to utilize OVS

capacity to compete with the telco MVPD. The public interest will not be served if the development of OVS simply results in the displacement of the current primary video distributor - the cable operator - by a telephone company distributor which may finance its business on the back of telephone rate payers. As both licensors and owners of programming services, MPAA members have a vital interest in facilitating the development of multiple competitive outlets where success among such outlets is dependent upon marketplace skills and program quality and not unnecessary regulatory advantages or improper subsidization.

A. Cable Operator's Choice Of OVS.

The Notice asks whether the Commission should allow cable operators to become OVS operators or provide programming using OVS capacity. Notice at ¶ 64. Under MPAA's goal of maximizing video outlets over the long run, MPAA believes that a cable operator should be permitted to become an OVS operator. As MPAA has stated, the Commission's rules should encourage both maximum facilities-based competition and a level playing field for all such competitors. In an environment where many of the burdens of Title VI regulation are not applicable to OVS, the only way to fully achieve these goals is to ensure that the same regulatory advantages accorded OVS operators and/or MVPDs using OVS facilities are available to cable operators who opt to utilize their own facilities for OVS.

Put another way, telephone companies have a statutory right to provide video programming as (i) franchised cable operators, (ii) OVS operators, or (iii) MVPDs on an OVS facility. Nothing in the 1996 Act prohibits cable operators from transforming their operations into an OVS facility or from utilizing OVS capacity on their own OVS facilities.

MPAA submits that a cable operators should not be precluded by the Commission's regulations from choosing to become OVS operators or from utilizing their own OVS facilities through an affiliated MVPD so long as such choice is consistent with outstanding contractual arrangements with programming vendors.

B. Program Exclusivity.

Section 653(b)(1)(D) extends to all MVPDs utilizing OVS capacity the obligation to comply with the Commission's network non-duplication, syndicated exclusivity and sports blackout rules applicable to cable operators. The Notice asks whether the OVS operator, the individual MVPDs, or some other entity should be responsible for enforcing these exclusivity rights and blacking out programming. Notice at ¶ 46. MPAA maintains that the answer to this question is dependent upon who is responsible for offering broadcast signals carried pursuant to must-carry or retransmission consent on the OVS facility. That issue is discussed more fully below. However, in general, MPAA submits that if broadcast signals are carried in fulfillment of the OVS operator's statutory must-carry obligations, it is the OVS operator that must be responsible for complying with appropriate exclusivity requests. If a system electing retransmission consent enters into carriage agreements with individual MVPDs rather than the OVS operator, then those MVPDs that obtain such consent to carry the broadcast station must take primary responsibility for enforcing exclusivity requests, although these may be circumstances where that responsibility could be delegated to the OVS operator (particularly in channel-sharing situations).

The Notice also asks how the various exclusivity provisions should be enforced on an OVS facility whose service area crosses multiple community units or relevant geographic

zones. Id. A cable operator's obligations to provide syndicated exclusivity, non-duplication and sports blackout protection currently are imposed on a community-by-community basis, even though a cable system frequently encompasses several such community units. While OVS service areas may be even larger in some instances than the service area of a single cable system, MPAA submits that MVPDs utilizing OVS facilities also should be obligated to provide the blackout rights on a community-by-community basis. As a technical matter, it may or may not be possible for either a cable operator or an MVPD using OVS capacity to limit the effect of the blackout to particular communities.

C. Must-Carry And Retransmission Consent.

Section 653(c)(1)(B) of the 1996 Act specifies that the must-carry and retransmission consent provisions of the Communications Act shall apply to any certified OVS operator. Section 653(c)(2)(A) further provides that the Commission's regulations implementing must-carry and retransmission consent in the OVS context shall, to the extent possible, impose obligations "that are no greater or lesser" than the obligations imposed on a cable operator. In the Notice, the Commission raises a number of questions regarding the application of must-carry and retransmission consent in the OVS context, including questions regarding how the must-carry allotment is to be calculated, the applicability of the channel positioning and signal availability requirements, and the relative obligations of the OVS operator and the MVPDs using the OVS facility. Notice at ¶¶ 59-60.

MPAA believes that the following analysis provides answers to most of the issues raised by the Notice that are consistent with the statutory goals of both the 1996 Act and the 1992 Cable Act. First, because the must-carry obligation clearly runs to the OVS operator,

the number of channels that must be "set aside" for must-carry purposes is determined by looking at the total capacity of the OVS facility, not the amount of capacity being utilized by a particular MVPD. Second, all of the stations carried in fulfillment of the OVS operator's must-carry set aside obligation have to be provided to every end user of the OVS facility (*i.e.*, every customer of every MVPD utilizing the OVS facility).¹⁰ Third, with respect to local stations electing retransmission consent, the OVS operator has the option of entering into a retransmission consent agreement, in which case the station's carriage counts towards the fulfillment of the OVS operator's must carry set aside requirement and must be "packaged" together with the must-carry stations that are provided to all end users. The station also may enter such agreements with individual MVPDs.¹¹ Finally, distant stations that have no must-carry election to make can enter into retransmission consent agreements with individual MVPDs utilizing the OVS facility.

As to the issue of how the must-carry and retransmission consent rules should apply with respect to OVS facilities spanning multiple television markets, the answer is somewhat different than that given with respect to the application of the syndicated exclusivity, network non-duplication, and sports blackout rules. Unlike those rules, must-carry obligations are determined on a system-wide (not community-by-community) basis. If a cable system spans more than one ADI, it is obligated to carry the signal on that portion of the system within the

¹⁰MPAA submits that the MVPD, not the OVS operator, should have the subscriber relationship with, and receive compensation from, the end user of the OVS facility. This includes compensation for any broadcast signals received by the end user and for any equipment provided to the end user to receive such signals.

¹¹Where a station electing retransmission consent grants such consent to more than one MVPD, the station must agree to shared channel carriage.

ADI of the local station. Where an OVS facility spans multiple ADIs, must-carry signals likewise must be carried in that portion of OVS facility area (the station's ADI) where the broadcast station is deemed local.

Finally, MPAA wishes to briefly address Section 653(c)(4) of the 1996 Act, which provides that "[n]othing in this Act precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of Section 111 of Title 17 [the cable compulsory license provision of the 1976 Copyright Act.]" Under the cable compulsory license provisions of Title 17, the level of royalty payments due for the retransmission of broadcast television programming is determined by reference to a cable operator's gross receipts from subscribers for the retransmission of such programming. As noted above, MPAA believes that, in the OVS context, it is the MVPD(s), not the OVS operator, that should have the subscriber relationship with the end user with respect to payment for all of the broadcast signals (and related equipment) provided to such end user and that the "gross receipts" for the services provided to the end user should not be fragmented between the OVS operator and the MVPD. Regardless of whether the Commission agrees, however, MPAA strongly urges the Commission to make clear that any rules it adopts regarding the provision of broadcast signals to end users of OVS facilities are not intended to affect the ultimate resolution of issues relating to the application of the cable compulsory license in the OVS context, whether made by Congress, the Copyright Office, or the courts.

IV. Conclusion.

MPAA believes that the various safeguards proposed in these comments not only will promote the development of OVS as a viable competitor in the video marketplace but also maximize the access to the OVS facility by video program vendors. MPAA urges their adoption by the Commission.

Respectfully submitted,

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Dated: April 1, 1996